

# Order

Michigan Supreme Court  
Lansing, Michigan

November 9, 2005

Clifford W. Taylor,  
Chief Justice

128511

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

ROBERT HILL, SHIRLEY HILL, TIMOTHY  
CARLSON, RANDALL KOLODZIEJSKI,  
LINDA KOLODZIEJSKI, WILLIAM  
GLASSON, BEVERLY GLASSON, DAVID  
ABRAHAM, KRISTIN ABRAHAM, DENNIS  
D. MARLOWE, DENNIS HIGHT, TRACY  
HIGHT, TED DOBEK, CAROLYN KUPIEC,  
FREDERICK CROSS, MICHELLE CROSS,  
SANDRA POWERS, DANIEL G. OLIVARES,  
FRANCESCO SIMONE, PAMELA SIMONE,  
GARY POTAPSHYN, GERALD KOWALSKI,  
and FRANK VITALE,  
Plaintiffs-Appellees,

v

CITY OF WARREN,  
Defendant-Appellant.

SC: 128511  
COA: 259706  
Macomb CC: 2000-001823-CZ

On order of the Court, the application for leave to appeal the April 11, 2005 order of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REMAND this case to the Court of Appeals for consideration as on leave granted. Among the issues to be considered, the Court of Appeals shall consider whether *Pohutski v City of Allen Park*, 465 Mich 675 (2002), affects the class certification issue in this case. *Pohutski* held that § 7 of the governmental tort liability act, MCL § 691.1407, does not permit a trespass-nuisance exception to governmental immunity, but ruled that this holding would be applied only to cases brought on or after April 2, 2002. In light of *Pohutski*, are issues relating to putative plaintiffs unnamed as of April 2, 2002 sufficiently disparate from issues relating to plaintiffs who were named as of April 2, 2002, such that certification of a single class containing both groups of plaintiffs would be inappropriate under MCR 3.501(A)(1)?

We do not retain jurisdiction.

KELLY, J., would deny leave to appeal.



s1102

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 9, 2005

*Corbin R. Davis*

Clerk